

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ROBERT HORTON, III, as next friend and)	
Guardian of ROBERT HORTON, IV and)	
ROBERT HORTON, IV,)	
)	
Plaintiffs,)	Case No.: 2:23-cv-02765
)	
v.)	Removed From:
)	30th Judicial District at Memphis
MEMPHIS SHELBY COUNTY SCHOOLS,)	Docket No. CT-4991-23, Div. II
)	
Defendant.)	
)	
)	
)	

NOTICE OF REMOVAL

Defendant Shelby County Board of Education, the governmental entity that governs Memphis-Shelby County Schools (“School District”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal removing this action from the Circuit Court of Shelby County, Tennessee, Case No. CT-4991-23, where it is currently pending, to the United States District Court for the Western District of Tennessee, Western Division. This cause is removable pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, in that Plaintiffs’ claims purport to raise questions under Federal law, including a claim for the violation of the Fourteenth Amendment to the United States Constitution. In support of removal, SCBE respectfully states as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. Plaintiff Robert Horton, IV is a former student of Memphis-Shelby County Schools. [Complaint, ¶ 3].

2. Upon information and belief, Plaintiff Robert Horton, III is or was Robert Horton, IV's parent and/or legal guardian. [*See generally* Complaint].

3. Defendant School District is a governmental agency located in Shelby County, Tennessee. [Complaint, ¶ 4].

4. Plaintiffs filed their Complaint for Damages for Student Discrimination and Malicious Prosecution in the Circuit Court of Shelby County, Tennessee ("Circuit Court") on November 29, 2023. [*See generally* Complaint.]

5. Plaintiffs do not identify any specific causes of action in their Complaint, but they purport to state a claim for discrimination, citing the Fourteenth Amendment of the United States Constitution.¹ [Complaint, ¶ 9.] A true and correct copy of the Complaint filed with the Circuit Court is attached as Exhibit A and is incorporated herein by reference.

6. The School District received a copy of the Complaint on December 5, 2023. Counsel for the School District sent its Waiver of Service of a Summons to Plaintiffs' counsel on December 11, 2023. A true and correct copy of the signed waiver form is attached as Exhibit B.

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Circuit Court of Shelby County and written notice will be provided to Plaintiffs, along with a copy of this Notice of Removal.

REMOVAL IS PROPER UNDER 28 U.S.C. § 1441

8. The United States District Court for the Western District of Tennessee is the federal judicial district embracing the Circuit Court of Shelby County, Tennessee, where this suit was

¹ The School District respectfully states that Plaintiffs have failed to state a claim upon which relief can be granted and submits that the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). In removing this action based upon Plaintiff's purported claim for discrimination under the Equal Protection Clause of the Fourteenth Amendment, the School District does not waive and expressly reserves all of its defenses.

originally filed. Venue is therefore proper under 28 U.S.C. §§ 123(c)(2) and 1441(a).

9. Pursuant to 28 U.S.C. § 1331, this court has original subject matter jurisdiction over this civil action because Plaintiff alleges violations of Federal law, including a purported claim for discrimination and violation of the Fourteenth Amendment to the United States Constitution.

10. Consequently, this civil action is properly removed pursuant to 28 U.S.C. § 1441(a).

11. The entire action is removable, as this Court also has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a), which provides "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." The state law claims asserted in Plaintiffs' Complaint arise from the same set of alleged facts as the claims brought pursuant to federal law. Thus, this Court has supplemental jurisdiction over the state law claims in the action.

NOTICE OF REMOVAL IS TIMELY FILED UNDER §1446(b)

12. "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. §1446.

13. The Plaintiffs' Complaint was filed on November 29, 2023 with the Circuit Court of Shelby County, Tennessee. The School District did not receive a copy of the Complaint until December 5, 2023 when its counsel received Plaintiffs' Notice of a Lawsuit and Request to Waive

Service of A Summons together with a copy of the Complaint. A copy of the Notice is attached as Exhibit C. Therefore, this Notice is timely filed within thirty days of the School District's receipt of the Complaint, as provided in 20 U.S.C. §1446(b).

NON-WAIVER OF DEFENSES

14. By removing this action from the Circuit Court of Shelby County, Tennessee, the School District does not waive any defenses available to it.

15. By removing this action from the Circuit Court of Shelby County, Tennessee, the School District does not admit any of the allegations in Plaintiffs' Complaint.

WHEREFORE, PREMISES CONSIDERED, Defendant School District, by and through undersigned counsel, desiring to remove this civil action to the United States District Court for the Western District of Tennessee, Western Division (being the district and division for the county in which such civil action is pending), pray that the filing of this Notice of Removal, the giving of written notice thereof to Plaintiffs, and the filing of a copy of this Notice of Removal with the clerk of the Circuit Court of Shelby County, Tennessee, shall effect the removal of said civil action to this Honorable Court.

Respectfully submitted, this the 11th day of December, 2023.

By: s/ Jamie L. Morton

Jamie L. Morton (TN BPR #31243)

Shelby County Board of Education

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Counsel for Memphis-Shelby County Schools

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via U. S. Mail, postage prepaid, this
11th day of December 2023.

Gerald Green
P.O. Box 264
Memphis, TN 38103
(also by email to indictmentdefense@gmail.com)

Counsel for Plaintiffs

s/ Jamie L. Morton
Jamie L. Morton